

POLICIES AND PROCEDURES JUDGE PETER H. CARROLL COURTROOM 303

Judge Carroll has established certain policies and procedures for Courtroom # 303. These policies and procedures are intended to supplement the provisions of the Bankruptcy Code (“Code”), the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), the Federal Rules of Civil Procedure (“Federal Rules”) and the Local Rules of the United States Bankruptcy Court for the Central District of California (“L.B.R.”), all of which are applicable to practice before this court. This summary is not intended to be exhaustive. The court reserves the right to modify these policies and procedures where appropriate on a case by case basis.

I. MOTIONS IN GENERAL

A. Evidentiary Requirements.

All motions and applications must be supported by declaration(s). Pleadings submitted without supporting declarations will likely be denied, even if no opposition is filed. In matters where an appraisal is submitted in support of a pleading, *e.g.*, relief from stay matters, the appraisal must be authenticated by a declaration of the appraiser or the appraisal will not be considered.

If the court determines an evidentiary hearing is necessary, the initial hearing will be treated as a preliminary hearing and the matter will be continued to another date for a final evidentiary hearing.

Unless the court determines that an evidentiary hearing is necessary, the evidentiary record closes upon expiration of the time for the filing of a reply under L.B.R. 9013-1(a)(8).

B. Failure to File Written Response.

The failure to file a timely written response to a motion shall be

deemed by the court to be consent to the granting or denial of the motion, as the case may be. See L.B.R. 9013-1(a)(11).

C. Motions Without Hearings.

With respect to all motions filed pursuant to L.B.R. 9013-1(g) or otherwise not requiring a hearing absent an objection and a request for hearing, the moving party must file a declaration stating that no opposition to the motion has been served within the objection period. The order will not be signed absent such a declaration.

D. Service of Pleadings.

Failure to properly serve pleadings in accordance with applicable rules will result in either a continuance of the hearing or denial of the relief requested.

E. Continuance or Withdrawal of Motions.

Parties agreeing to continue a scheduled hearing on a motion merely need to advise the Courtroom Deputy of the new date and time of the hearing. No written stipulation is necessary.¹

If a motion is to be withdrawn or a hearing continued, parties should notify the Courtroom Deputy as quickly as possible because tentative rulings are posted on most matters within 48 hours of the scheduled hearing.

A party requesting a continuance that is opposed must comply with L.B.R. 9013-1(f) for continuance of a contested matter.

¹ This procedure does not apply to trials. See Section VIII (F), *infra*.

II. MOTIONS FOR RELIEF FROM STAY

A. Evidentiary Requirements.

A moving party asserting a security interest in property of the debtor must attach to the motion evidence of such perfected security interest. In cases where the original note/deed of trust has been assigned, copies of all recorded assignments should be attached to the motion. No order granting relief from the stay will be signed absent properly authenticated documentary evidence establishing movant's interest in the debtor's property.

A motion seeking relief from the stay to continue an unlawful detainer action must be supported by a declaration of the owner or property manager, together with a properly authenticated copy of the unlawful detainer complaint and/or the state court judgment. Failure to provide such evidence may result in denial of the motion even if the debtor fails to respond or appear.

B. Service on Motion on Lienholders.

Any motion for relief from stay in which the movant seeks authority to foreclose upon (or to annul the stay with respect to a foreclosure sale conducted regarding) property owned by the debtor or the estate, whether real or personal, tangible or intangible, must be served on all parties (other than the movant) identified in the debtor's schedules or the public record as holding a lien against the property that is the subject of the motion.

III. SELF-CALENDARING

The court has implemented a self-scheduling system to allow counsel and parties to schedule hearing dates for matters heard on regular notice without prior approval from the Courtroom Deputy. The Notice Re Self-Scheduling System is posted in the courtroom, and available on the court's website (www.cacb.uscourts.gov). You may also obtain the available dates and times for hearings by calling the court's general information number [(951) 774-1100] and selecting the menu options

necessary to direct you to calendaring information for Judge Peter H. Carroll.

IV. EMERGENCY MOTIONS / MOTIONS FOR ORDERS SHORTENING TIME / EX PARTE APPLICATIONS

L.B.R. 9075-1 is **STRICTLY ENFORCED** by the court with respect to both (a) emergency motions under L.B.R. 9075-1(a), *i.e.*, rare matters requiring an order on less than 48 hours notice, and (b) motions to be heard on shortened time under L.B.R. 9075-1(b), *i.e.*, a non-emergency motion to be heard on notice shorter than regular notice.

With respect to motions to be heard on shortening time, L.B.R. 9075-1(b) contemplates a separate motion requesting an order shortening time, supported by separate declarations containing competent evidence establishing the justification for a hearing on shortened notice. The rule requires that a motion requesting an order shortening time:

- A. Be accompanied by a memorandum stating (1) the nature of the request; (2) the name of counsel for the opposing party, if known, (3) the reasons for seeking an order shortening time, and (4) points and authorities in support thereof.
- B. Be accompanied by declarations of a competent witness under penalty of perjury that (1) justify the setting of a hearing on shortened notice and (2) support the granting of the motion itself on the merits.
- C. Be accompanied by the substantive motion that is to be heard on shortened notice, together with all declarations and other required papers in support thereof.

The Judicial Assistant will notify the moving party of the court's decision to grant or deny a motion under L.B.R. 9075-1, and fax a copy of the order to the movant.

Ex parte applications are appropriate only in limited circumstances.

See In re Intermagnetics Am., Inc., 101 B.R. 191 (C.D. Cal. 1989). An ex parte application determined to be substantively or procedurally improper will be denied without prejudice to being brought on a properly noticed motion.

V. TELEPHONIC APPEARANCES

Telephonic appearances are allowed through *CourtCall* in all matters, except the following:

- A. Trials and Evidentiary Hearings (all counsel and all witnesses *must* appear in person).
- B. Chapter 11 Status Conferences (debtor and debtor's counsel *must* appear in person). Other parties in interest may appear telephonically.
- C. Chapter 11, 12 & 13 Confirmation Hearings (debtor, debtor's counsel, and all objecting creditors *must* appear in person).
- D. Any matter designated by the court as requiring a personal appearance.

The court's Notice Re: Telephonic Appearance Procedures can be found under the *Procedures/Rules/Forms* section, *Judge's Forms & Instructions* subsection, of the court's web site (www.cacb.uscourts.gov).

VI. TENTATIVE RULINGS

A tentative ruling may be issued by the court on any matter set for hearing, except:

- A. Confirmation hearings in Chapter 11, 12 & 13 cases
- B. Status conferences
- C. Trials

D. Order to Show Cause hearings

E. Matters set on shortened notice

Generally, tentative rulings are issued not later than 2:00 p.m. on the day preceding the scheduled hearing. Tentative rulings are available via the court's web PACER service. The tentative rulings are also posted outside Courtroom # 303 and placed on counsel tables inside the courtroom.

Notwithstanding the issuance of a "Tentative Ruling," **APPEARANCES ARE REQUIRED.** The court will call for hearing any matter that has a "Tentative Ruling." The "Tentative Ruling" is subject to change, either as a result of argument presented at the hearing or as a result of further consideration by the court. The court's Notice Re: Tentative Ruling Procedures can be found under the *Procedures/Rules/Forms* section, *Judge's Forms & Instructions* subsection, of the court's web site (www.cacb.uscourts.gov).

VII. EMPLOYMENT OF PROFESSIONAL PERSONS

When employment of a professional person is not opposed, the applicant should file a declaration attesting that the 15-day period for objections under L.B.R. 2014-1(b)(2) has passed and that no objection to the application has been filed and served on the applicant. This will expedite entry of the employment order.

When employment of a professional person is opposed (*i.e.*, an objection has been timely filed and served), the applicant should set the matter for hearing.

VIII. CHAPTER 11 CASES

A. Disclosure Hearings.

Prior to the disclosure hearing the court reviews each proposed disclosure statement (whether or not objections have been filed). Accordingly, counsel are requested to notify chambers not later than 3

court days prior to the scheduled hearing if the disclosure statement will be continued.

The court may present a checklist of deficiencies in the proposed disclosure statement at the disclosure hearing. Assuming no other objections have been filed and depending on the extent of the revisions required, the court will either continue the disclosure hearing or allow conditional approval of the disclosure statement. When the court has conditionally approved the disclosure statement, the plan proponent will need to present an amended disclosure statement together with a proposed order approving the disclosure statement that conforms to Official Form 13.

If the plan proponent intends to amend its proposed disclosure statement in response to objections that have been filed, a “red-lined” version of the amended disclosure statement should be filed with the court and circulated to opposing counsel not later than 3 court days prior to the scheduled disclosure hearing. If the plan proponent will require a continuance to prepare the amended disclosure statement, it should notify opposing counsel and the court in advance of the disclosure hearing. If objections cannot be resolved by stipulation and/or amendment of the proposed disclosure statement, the court will consider any unresolved objections at the disclosure hearing.

Once a disclosure statement has been approved, the court will schedule the confirmation hearing at the conclusion of the disclosure hearing. The plan proponent should prepare a proposed order approving the disclosure statement that conforms to Official Form 13 with the dates supplied by the court at the disclosure hearing.

B. Confirmation Hearings.

Prior to confirming any proposed plan of reorganization, the court will require evidence of compliance with each requirement of 11 U.S.C. § 1129(a) and, when applicable, § 1129(b). Counsel are cautioned that the failure of a class to vote does not constitute acceptance of the plan. In re M. Long Arabians, 103 B.R. 211, 215 (9th Cir. BAP 1989). A class must

affirmatively vote to accept the plan. See In re Townco Realty, Inc., 81 B.R. 707, 708 (Bankr. S.D. Fla. 1987).

A completed tabulation of ballots should be filed by the plan proponent not later than 3 court days prior to the confirmation hearing. If no objections to confirmation have been filed, the plan proponent should also file declarations in support of confirmation that address the elements of § 1129.

If objections to confirmation have been filed, the court will normally treat the confirmation hearing as a scheduling conference. At that hearing, the court will establish a briefing schedule, if appropriate, and set a further evidentiary hearing during which live testimony may be presented.

If the objecting parties and the plan proponent so stipulate, the objections may be resolved based on written evidence and briefs filed with the court prior to the confirmation hearing. The court will also allow live testimony and cross-examination, time permitting, at the initial confirmation hearing upon stipulation of the parties.

IX. ADVERSARY PROCEEDINGS

A. Motions for Entry of Default Judgment.

A default judgment will be entered upon motion without a hearing, unless otherwise ordered by the court. The motion must be filed and served upon the defendant in accordance with L.B.R. 9013-1, and must be supported by a memorandum of points and authorities, declaration(s) and appropriate documentary evidence, *i.e.*, invoices, statements, contracts, *etc.* The motion and supporting declaration(s) must also establish that the defendant is not an infant or incompetent person or in the military service within the meaning of the Servicemembers Civil Relief Act (Pub. L. 108-189) (50 U.S. Code App. §§ 501-594). A proposed judgment should be lodged with the motion.

B. Joint Status Report.

In all adversary proceedings, a Joint Status Report must be timely filed in accordance with L.B.R. 7016-1(a) *unless*:

1. Prior to the date set for the status conference, the parties have filed with the court a stipulation that resolves all issues raised by the adversary proceeding and provides for either a dismissal of the action in its entirety or the entry of a judgment in the action;
2. Prior to the date of the status conference, defaults have been entered against all defendants and the plaintiff has filed and served a motion for default judgment; or
3. Prior to the date of the status conference, the parties have filed a written stipulation continuing the status conference to a later date (in which case a written status report must be filed not later than 10 days prior to continued status conference date).

If a defendant fails to cooperate in the preparation of a Joint Status Report, the plaintiff must file a unilateral status report not less than 10 days before the date set for the status conference pursuant to L.B.R. 7016-1(a)(2). The unilateral status report must contain a declaration setting forth the attempts made by plaintiff to contact or obtain the cooperation of the defendant.

C. Status Conference & Scheduling Order.

Generally, the court sets deadlines for the joinder of parties, amendment of pleadings, discovery, and dispositive motions at the status conference. The deadlines are reduced to a Scheduling Order which is prepared by the court, entered in the case, and served on the parties following the status conference.

D. Discovery Disputes.

Parties shall comply with L.B.R. 9013-1(c) when disputes arise with respect to discovery under Fed.R.Bankr.P. 7026 - 7037 or Fed.R.Bankr.P. 2004. Parties are expected to attempt to resolve discovery disputes without judicial intervention by conferring in good faith. If good faith negotiations between the parties fails to resolve the matter, *and if disposition of the dispute during the discovery event likely would result in substantial savings of expense or time*, the parties may contact the Courtroom Deputy to determine if the judge is available to address the problem through a telephone conference during the discovery event. Any request for sanctions relating to a discovery dispute must be made by separate noticed motion.

E. Joint Pre-Trial Order.

A Joint Pre-Trial Order is required in all adversary proceedings, unless otherwise ordered by the court. At a continued status conference after expiration of the discovery deadline, the court will enter an order setting the trial date and establishing procedures for the conduct of the trial, including procedures for direct testimony by declaration and deadlines for trial briefs, exhibits, and the filing of a Joint Pre-Trial Order pursuant to L.B.R. 7016-1(b). The deadlines set forth in the Joint Pre-Trial Order are strictly enforced by the court.

F. Continuances.

The court will grant continuances of trials for good cause only, notwithstanding a stipulation by the parties to a continuance. A request for continuance must be made by noticed motion or by a written stipulation stating the reason for the requested continuance. Parties requesting a continuance of a trial must comply with L.B.R. 9013-1(f).

G. Trial Calendar.

The trial time assigned at the scheduling conference will be treated as a firm trial date. All matters are expected to be ready for immediate trial.

Not later than the Monday of the week prior to the date set for trial, counsel for Plaintiff shall telephone the Courtroom Deputy [(951) 774-1097] and report (a) whether the parties intend to go forward with trial as scheduled; (b) if settlement is likely; (c) whether the time reserved for trial is realistic; and (d) any other relevant information.

During the week prior to trial, the court may move the starting time or day. The Courtroom Deputy will advise the parties of any such change by telephone. **All parties are cautioned to be prepared to adjust their schedules accordingly.** The first trial of the week will begin promptly on Monday morning. As to cases that will be tried Monday morning, counsel will be advised by the preceding Friday, and counsel and witnesses for such cases should be present on Monday morning at 9 a.m. The court expects counsel and witnesses to be available on 2-3 hours telephone notice for the remainder of the week.

H. Settlement.

Stipulations for settlement shall be in writing executed by each party or their counsel and delivered to chambers before the date of trial. If time restraints prevent reducing a settlement to writing prior to trial, all the parties, or their counsel, shall (a) advise chambers of the settlement and (b) appear at the time set for trial to recite the stipulation on the record.

X. COURTROOM ETIQUETTE

Unless court is in session, please check in with the Court Recorder prior to your scheduled hearing. Do not approach or speak with the Court Recorder while a hearing is in progress. Proposed orders should be placed in the basket at the rear of the courtroom at the conclusion of the hearing. When leaving orders for the court's signature, please write the calendar number of the case in the upper left-hand corner of the order.

The use of electronic devices (*i.e.*, cellular phones, pagers, and similar devices) in the courtroom is strictly prohibited, and such devices must be turned off before entering the courtroom.

XI. COMMUNICATIONS WITH CHAMBERS' STAFF

Rule 9003(a) prohibits ex parte communications with the court concerning matters affecting a particular case or proceeding. Rule 5-300(C) of the California Rules of Professional Conduct specifies that for disciplinary purposes, a contact with a judge's law clerk constitutes a contact with the judge. No attorney may initiate contact with the judge or chambers' staff concerning substantive issues or matters arising in or affecting a particular case or proceeding. However, counsel are encouraged to contact chambers' staff regarding case management issues, including but not limited to, when (a) a form of order is opposed, (b) an emergency pleading or request for order shortening time is being submitted, (c) a chapter 11 plan proponent does not intend to go forward with a disclosure statement or confirmation hearing, or (d) a calendared matter has been settled, continued or withdrawn.

COURT STAFF:

Connie Ray, Judicial Assistant	(951) 774-1031
Law Clerk	(951) 774-1032
John Craig, Courtroom Deputy	(951) 774-1097